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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

Supreme Court, U.S.
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No. 71-183

THE AGUA CALIENTE BAND OF MISSION INDIANS, ET AL., PETITIONERS

v.

THE COUNTY OF RIVERSIDE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONSE OF PETITIONERS AGUA CALIENTE BAND OF MISSION INDIANS AND AMICI TO STATEMENT OF GOVERNMENT POSITION

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CITATIONS

Cases: Page

Oklahoma Tax Commission v. United States,
319 U.S. 598, 63 S. Ct. 1284, 87 L. Ed. 1612 (1943) 1

Squire v. Capoeman, 351 U.S. 1, 76 S. Ct. 611,
100 L. Ed. 883 (1956) 2

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This case involves the taxation of Indian lessees based essentially on the value of the Indian lands they lease. As the record shows, this tax, though in form on the lessees, falls in fact on the Indians and demonstrably either sharply diminishes their leases or wipes out altogether their capacity to utilize their lands by the only means they have.

The issue at this stage is whether this question is important. Noticeably, the Solicitor General does not address himself to this question. He does argue that a given case would require affirmance of this decision if the certiorari were granted. *Oklahoma Tax Commission v. United States,* 319 U.S. 598, 63 S. Ct. 1284, 87

L. Ed. 1612 (1943). This case did not seem this significant to the Court below, which specifically and fairly noted in n. 15, Pet. App. p. 18a, that a later decision of this Court might cast a different light on this decision. *Squire v. Capoeman,* 351 U.S. 1, 76 S. Ct. 611, 100 L. Ed. 883 (1956). We had our own say on this in our petition. The Solicitor General also argues that the Indians should as a matter of policy bear the weight of these taxes; Memorandum of the United States, p. 11.

All this is immaterial. Concededly, Congress has power to exempt lands from this burden. A key issue is whether it has. The pathetic aspect of this case is the everlasting whipsawing of the Indians. The Solicitor General says that Congress should legislate on this subject if it wishes to protect the Indians in this regard, but in the amicus brief filed here by Representative James A. Haley, Chairman of the Indian Subcommittee of the Interior and Insular Affairs Committee of the House of Representatives since 1955, declares that this has already been done. Such a collision from the Indian standpoint is itself important.

The larger issue remains important. The tragic position of the American Indian in litigation is that the Government speaks for him with some appearance of benign wardship. Such expressions, as here, that Indians should bear this weight of taxation, at least do not express the Indian view. Since the Solicitor General does not address himself to the usual factors of importance, we quote President Nixon in his message of July 8, 1970:

> "The destiny of Indians and Indian communities throughout the United States is dependent upon their ability to utilize productively their remaining lands and natural resources. The federal government has acknowledged its trust responsibility to Indians, which arises out of a history of unfortunate relations between the nation and its original inhabitants. In pursuance and fulfillment of this responsibility, the government has afforded certain advantages to its Indian wards. Special treatment and programs for Indians are necessary to compensate for unconscionable dealings with the Indians in the past and to

remedy the most alarming present state of abysmal poverty and despair that typifies Indian communities."

The Indians of America join the White House in this view; the meaning of trust status is vital to the productive utilization of which the President speaks. This is a matter of the utmost importance to the Indians of America. The impact varies — some tribes lease more than others, or are more dependent on their leases than others. In some cases the blow is particularly devastating; as the record shows, the Fort Mohave Indians are among the most poverty-stricken inhabitants of North America, and their California leasing has been obliterated since the tax.

In urging the importance of this question, the Agua Calientes are joined by over 100 tribes of the Indians of America. Whether California can breach the promise to the trust hope is an important question, worthy of consideration here.

Respectfully submitted,

LEWIS & ROCA

By John P. Frank

RAYMOND C. SIMPSON
Counsel for Petitioners

January, 1972

AMICUS TRIBES

Ahtna Tanah Ninnah Associates
Alaskan Federation of Natives
Akiak Village
Anvik City Counsel
Black Feet Tribe
Big Pine Indian Tribe
Tlingit Haida Indian Tribe
Cabazon Band of Mission Indians
Chemhuevi Indian Tribe
Cherokee Nation of Oklahoma
Cheyenne River Sioux Tribe
Chippewa Cree Tribe
Choctaw Tribe of Mississippi
Coeur de 'Alene Tribe
Colorado River Indian Tribes
Confederated Tribes of the Colville Reservation
Salish and Kootenai Tribes
Cook Inlet Native Association
Cowlitz Tribe
Creek Sioux Tribe
Duckwater Shoshone Tribe
Fairbanks Native Association
Fort Hall Shoshone Bannock Tribe
Fort McDermitt Piaute Tribe
Fort Mohave Indian Tribe of Arizona, California and Nevada
Fort Peck Assini Boine Sioux Tribe
Fort Yukon Native Association
Grand Portage Indian Tribe
Gila River Pima-Maricopa Tribe
Haida Tribe
Hailla Indian Tribe
Hoopa Valley Tribe
Kalistel Indian Tribe

Keweenaw Bay Indian Tribe
Kalamath River Tribe
Lac Du Slambeau Band of Lake Superior Chippewa Indians
Leach Lake Tribe of Minnesota
Lower Brule Sioux Tribe
Lummi Tribe of Washington
Makah Indian Tribe
Mescalero Apache Tribe
Metlakatla Indian Tribe
Miccosukee Tribe of Florida
Mille Lacs Chippewa Tribe
Minnesota Chippewa Tribe
Narragansett Tribe, Inc.
Native Village of Eklutna
Nenana Native Association
Omaha Tribe of Indians
Oneida Tribe of Indians
Ottawa Indian Tribe
Papago Tribe
Peoria Indian Tribe
Pict River Indian Tribe
Puyallup Tribe
Pyramid Lake Piaute Tribe
Quileute Tribe
Quapaw Indian Tribe
Quinalt Nation
Red Cliff Band of Lake Superior Chippewa Indians
Rincon Band of Indians
Sac and Fox Intertribe of Oklahoma
Salt River Pima-Maricopa Indian Tribe
Sauk-Suiattle Tribe
Seminole Tribe of Florida
Seneca Nation of Indians
Shoalwater Tribe

Shoshone Piaute Tribe
Shoshone Bannock Tribe
Sisseton Wahpeton Sioux
Skokomish Tribe
Snohomish Tribe
Southern Ute Tribe
Reno Sparks Tribe
Spokane Tribe
Squaxin Island Tribe
Stillaguamish Tribe
Stockbridge Munsee Indian Tribe
Susanville Indian Tribe
Swinomish Tribe
Tanna Chies's Conference
Three Affiliated Tribes
Taos Pueblo Tribe
The Tulalip Tribe
Tunica Indian Tribe
Unal Aklett Tribe
Uintah and Ouray Tribes
Walker River Piaute Tribe
Washone Tribe
Winnebago Tribe of Nebraska
Yakima Tribe
Yaqui Tribe
Yavapai Apache Indian Tribe
Fort Belknap Council Tribe
Quechan Indian Tribes of the Fort Yuma Reservation of Arizona and California
Native American Rights Fund
California Indian Legal Services
Dinebeiina Nahiilna Be Agaditahe
Association on American Indian Affairs, Inc.
The San Carlos Apache Tribe